

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

HAKIM NASEER,

Plaintiff,

v.

M. McCULLICK and J.D. FISHER,

Defendants.

ORDER

10-cv-139-bbc

Plaintiff Hakim Naseer is proceeding on claims that defendant M. McCullick used excessive force against him and that defendant J.D. Fisher failed to intervene. Now before the court is plaintiff's motions to compel and for sanctions. Defendants move for a protective order if plaintiff's motion to compel is denied.

In his motion, plaintiff seeks to compel responses to interrogatories regarding any procedures or policies correction staff use when an inmate refuse to remove his arm from a cell's trap door. Defendants object to producing this information because of security concerns, which I conclude are legitimate. In this case, plaintiff was provided a copy of the videotape of the entire incident in this case in which he alleges he was harmed when a corrections officer intentionally lifted the trap door when his arm was extended through it and pushed it against it with her entire body weight until he screamed for help , then walked away, "laughing and saying provocative racial slurs." Complaint, dkt. 1, at 8-9.

The existence and use of—or deviation from—procedures for handling resistant inmates all are topics that could be discoverable under Rule 26(b) if everything else was equal. But everything else is not equal: as defendants argue, disclosing this information to an inmate raises a serious security concern affecting the safety of both staff and inmates in the future. In any event, plaintiff claims that the defendant intentionally and unnecessarily cause him severe pain,

then laughed about it and racially taunted him. Perhaps it goes without saying that no written procedure or technique for controlling an inmate calls for or would approve such extreme behavior. Further, a video recording captured the whole incident, so there is a real-time record of what actually happened, thus minimizing the need to refer to collateral sources for explanations as to what happened. In other words, plaintiff has no direct need for the requested information in order to prove his case. Therefore, the court will not require the defendants to reveal any specific procedures or techniques that they used or could have used in this situation.

However, if the defendant intends to defend the claim of excessive force by admitting that she pinned plaintiff's arm in the trap door but claiming that her actions were dictated by techniques she was taught to use in this situation, then this must be disclosed to plaintiff, along with a general characterization of what this called for in the instant case. Whether further discovery or an in camera review are necessary at that point remains to be seen, so at this juncture I will deny defendant's motion for a protective order without prejudice.

Next, plaintiff moves for sanctions because defendants failed to send him discovery ordered by the court. This discovery was served on plaintiff and he was also provided duplicate copies by the defendant after he asserted he did not receive the first set of documents. Therefore, plaintiff's motion for sanctions will be denied.

ORDER

IT IS ORDERED that

- (1) Plaintiff Hakim Naseer's motion to compel discovery, dkt. 69, is DENIED as framed.
- (2) Plaintiff's motion for sanctions, dkt. 68, is DENIED.
- (3) Defendant's motion for a protective order, dkt. 79, is DENIED without prejudice.

Entered this 23rd day of November, 2010.

BY THE COURT:

/s/

STEPHEN L. CROCKER
Magistrate Judge